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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,156	09/10/2003	Michael Wayne Bricker	18013 (AT 20958-43)	3718

7590 08/27/2007  
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EXAMINER
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NGUYEN, CHAU N

ART UNIT	PAPER NUMBER
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2831

MAIL DATE	DELIVERY MODE
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08/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**MAILED**

**AUG 27 2007**

**GROUP 2800**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

Application Number: 10/659,156  
Filing Date: September 10, 2003  
Appellant(s): BRICKER ET AL.

**GROUP 2800**

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Dean D. Small  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 9<sup>th</sup> 2007 appealing from the Office action mailed Nov. 9<sup>th</sup> 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

<b>6,310,295</b>	<b>DESPARD</b>	<b>10-2001</b>
<b>GB 725,624</b>	<b>WENTWORTH</b>	<b>03-1955</b>

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any

inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Despard (6,310,295) in view of Wentworth (GB 725,624).

Despard (Figure 2A) discloses a cable comprising a core comprising at least one twisted pair of insulated wires, and a jacket surrounding the core (re claim 1). Despard also discloses the core comprising a filler (40) and the at least one twisted pair comprising a plurality of twisted pairs arranged around the filler (re claims 2, 21 and 22).

Despard does not disclose the jacket comprising at least one spline projecting inward from an inner surface of the jacket. Wentworth discloses a cable comprising a jacket (Figure 4) comprising at least one spline (12) or a plurality of splines (re claims 3 and 12) projecting inward from the inner surface of the jacket. It would have been obvious to one skilled in the art to provide the jacket of Despard with a plurality of splines projecting inward from the inner surface of

jacket to provide air (cooling) channels around the insulated wires and to provide a cable having an improvement in the case of stripping and an increase in flexibility as taught by Wentworth (re claims 1, 10 and 19).

The modified cable of Despard also discloses at least a portion of the twisted pair being positioned between the spline and the center of the core, the at least one spline is in contact with the twisted pair, and the feature of the at least one spline being in contact with the twisted pair to prevent relative movement of the jacket with respect to the twisted pair is inherent from the modified cable of Despard since it comprises structure and material as claimed. The modified cable of Despard also comprises the spline being continuously extending on the inner surface of the jacket (re claims 4 & 13), the spline extending along a longitudinal axis of the core (re claims 5 & 14), the at least one spline comprising at least two splines or four splines equally spaced from one another (re claims 7, 8, 16, 17 & 20), the spline projecting radially inwardly from the inner surface of the jacket (re claims 9 & 18), the jacket comprising a round inner surface (re claim 10), the core comprising a round central core filler (40) (re claim 11). Re claims 6 and 15, it has been held that the patentability of a product claim is determined by the novelty and nonobviousness of the claimed product itself without consideration of the process, extruded, for making it which is recited in the claim. *In re Thorpe*, 227 USPQ 964.

### **(10) Response to Argument**

Appellant argues Despard does not suffer from the problems nor disadvantages that Wentworth seeks to overcome. The Wentworth patent application was filed June 23, 1953 and teaches a construction for a power cable based on 1953 technology and the state of the art in 1953. In contrast, the Despard patent application was filed December 3, 1999, and teaches a construction for a data cable based on 1999 technology and the state of the art in 1999. As such, the available materials, manufacturing techniques, and performance requirements (both physical and electrical) at the time of Despard's invention are much more refined, developed and advanced, as compared to the available materials, manufacturing techniques, and performance requirements that were available and known in 1953 at the time of Wentworth's invention. Therefore, it does not automatically nor necessarily follow that the power cabling problems, circa 1953, overcome by Wentworth would be experienced by Despard's data cable, built in 1999 or up to the filing date of the present application.

Examiner disagrees. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any

one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Regarding the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Appellant alleges that if the claimed invention of the present invention were obvious, why has no one implemented such a cable prior to appellant's invention. During examination, the question of why has no one thought about it before, is not relevant in determining the patentability of an invention. The fact that the claimed invention of the present invention were not described or published, prior to appellant's invention, does not constitute to the patentability of the invention.

Appellant argues that there is no reason to apply the teaching of Wentworth to the cable of Despard. Appellant alleges that because Despard's cable would not experience adhesion between the twisted pairs and the cable jacket because the twisted pairs do not have large area of continuous contact with the jacket and because the insulator on the twisted pairs and the jacket are formed from dissimilar materials. This argument is not found persuasive. The test for obviousness is not



whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. Even though the drawings of Despard do not show the twisted pairs having a great deal of areas of contact between the twisted pairs and the jacket and the materials of the two being different, it can be clearly seen by one of ordinary skill in the art that when the jacket of Despard is modified to include the splines taught by Wentworth, there will be lesser areas of contact between the twisted pairs and the jacket. Regardless the insulating materials of the twisted pairs and the jacket being different, up to certain temperature, one would melt and bond to the other. Accordingly, providing the splines taught by Wenworth in the jacket of Despard would ease the stripping of the jacket from the twisted pairs.

Appellant then argues that Despard would not suffer from heating during manufacturing as described in Wentworth, therefore the person of ordinary skill would not have been motivated to add Wentworth's ribs to Despard's jacket to provide air cooling channels. Examiner disagrees. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be

expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art, and the teaching, suggestion, or motivation can be found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art with the general knowledge would understand that air has a lowest dielectric constant, providing more air around insulated conductors would improve the electrical performance of said conductors.

Appellant then alleges that there is no indication in Despard, nor Wentworth, that Wentworth's ribs would change the flexibility of Despard's cable. Again, it has been held that the claimed invention does not have to be expressly suggested in any one or all of the references in order to combine the references. Instead, the teaching or motivation to do so can be found in the knowledge generally available to one of ordinary skill in the art. The inner surface of Despard's jacket is modified to include splines (or ribs) taught by Wentworth. In other words, a part of the jacket material of Despard is removed to form the splines or ribs as taught by Wentworth. Accordingly, the flexibility of the jacket, or of the cable in general, would be improved.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,




Chau N. Nguyen

Primary Examiner

Conferees:

David Blum 

Dean Reichard 

Chau N. Nguyen 